

NORTHWESTERN HAWAIIAN ISLANDS
CORAL REEF ECOSYSTEM RESERVE ADVISORY COUNCIL MEETING

Wednesday-Thursday, July 7-8, 2004

Honolulu International Airport

7th Floor Conference Room

Honolulu, O'ahu

8:30 a.m. – 3:30 p.m.

Draft Meeting Notes

Day One

ATTENDEES [Advisory Council Members]: Paul Achitoff (Conservation); Buzzy Agard (Native Hawaiian); William Aila (Native Hawaiian); Rick Hoo for Rick Gaffney (Recreational Fishing); Bill Gilmartin (Research); Gary Dill for Bobby Gomes (Commercial Fishing); Gail Grabowsky (Education); Cindy Hunter (Research); Tim Johns (State of Hawai'i); Kekuewa Kikiloi (Native Hawaiian); Bill Robinson (Pacific Islands Regional Office); Kem Lowry (Citizen-at-Large); David Laist for Lloyd Lowry (Marine Mammal Commission); Roy Morioka for Kitty Simonds (Western Pacific Fishery Management Council); Dwight Mathers, CDR (U. S. Coast Guard); Robert Smith (NWHI Reserve); Laura Thompson (Conservation); John Muraoka (Department of Defense); Beth Flint for Jerry Leinecke (U. S. Fish and Wildlife Service); Linda Paul (Conservation); Birgit Winning (Ocean-Related Tourism). Excused: Rick Gaffney (Recreational Fishing); Bobby Gomes (Commercial Fishing); Naomi McIntosh, (Hawaiian Islands Humpback Whale National Marine Sanctuary). Absent: Ray Arnaudo (Department of State); Philip Taylor (National Science Foundation).

[Alternate Council Members (not representing voting members)]: Athline Clark (State of Hawai'i).

[NWHI CRER Staff]: Andy Collins; 'Aulani Wilhelm; Malia Chow; Moani Pai; Mokihana Oliveira; Randy Kosaki; Hans Van Tilburg; Kaliko Amona; Tom Friel (NOAA Enforcement). [NMSP Staff]: Edward Lindelof; Allen Tom.

[Members of the Public]: Kitty Courtney, George Redpath (Tetra Tech); Melva Aila; Jarad Makaiau (WPFMC); Mike Tosatto (PIRO); Cha Smith (KAHEA); Greta Aeby (DLNR); Cheri Recchia, Warner Chabot (The Ocean Conservancy).

PURPOSES OF THE MEETING: For the Council to take action on the subcommittee recommendations on fishing and draft fishing goal and objectives for the proposed sanctuary.

I. CALL TO ORDER

Chairperson Tim Johns called the meeting to order at 8:50 a.m. William Aila offered the opening pule, calling for the care of the environment, deeper understanding, and skills and strengths to carry out the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve project. This was followed by introductions of all of the members of the Reserve Advisory Council (RAC/Council), staff, and members of the audience.

II. REVIEW AND APPROVAL OF MINUTES

Johns called for comments on the minutes of the Reserve Advisory Council's (RAC/Council) meeting held on April 29, 2004. CDR Dwight Mathers called attention to page 2, paragraph 3, 3rd sentence. He clarified that the VMS system is really an automatic identification system (AIS) that will be effective the end of December 2004, rather than July 1, 2004. Mathers further clarified that VMS information discussed in the next sentence is not classified, but treated as proprietary. There being no further comments from the floor, Johns called for a motion to approve the minutes. It was moved by Laura Thompson, seconded by Linda Paul, that the draft minutes be approved as clarified. Motion passed unanimously.

III. REVIEW AND APPROVAL OF AGENDA

The agenda was approved as circulated. Johns noted that this day was "Fishing Day", as it would be spent reviewing fishing proposals for the RAC's resolution on the fishing regime for the proposed NWHI sanctuary.

IV. EXPLANATION OF NWHI MANAGEMENT TRANSITION

Robert Smith reported that in addition to his retirement in September 2004, Diane Ahuna, a Program Specialist in the Hilo Office, will be retiring at the same time prompting the decision to transfer the entire NOAA operation relative to the Reserve to Honolulu. The Research Coordinator position in Hilo would be transferred to Honolulu after a year. The Discovery Center, which welcomed 55,000 visitors in its first year, would remain in Hilo and accommodate space for the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). The HIHWNMS is looking to establish a presence in Hilo and there is space to accommodate that. R. Smith noted that 'Aulani Wilhelm would serve as the Acting Reserve Coordinator for the first 120 days. He then stated that Wilhelm would sit in his chair for this meeting.

Johns extended congratulations and condolences to Wilhelm.

V. REVIEW OF 304(A)(5) PROCESS

Emily Fielding introduced Kitty Courtney and George Redpath of Tetra Tech, Inc., the new consultant firm hired to prepare an environmental impact statement (EIS) for the NWHI sanctuary designation. Fielding then gave a summary review of the 304(a)5 process, showing the relationship of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson), and the National Marine Sanctuaries Act (NMSA) and elements of the 304(a)(5) package that would go to the Western Pacific Fishery Management Council (WPFMC). As explained by Redpath, Tetra Tech's work will involve assembling a range of alternatives through a screening process ultimately leading to alternatives considered in the EIS, including the preferred alternative. Redpath commented that the screening is done by the NMSP, essentially an internal process. The EIS components include: purpose and need; alternative development; alternative comparison; affected environment; environmental consequences; cumulative impacts; and the management plan, which would be a separate attachment to the EIS.

Questions and comments followed. Paul Achitoff asked who would be making the decision as to which alternatives would be included in the EIS. Redpath responded that recommendations would come from NOAA staff both here and at Headquarters. Don Schug clarified that the “No Action” alternative is the EO as it now stands. Kem Lowry clarified that the fishing alternative recommendation of the RAC is just one of many, that there are no special status among other fishing alternatives that exist or would exist, and asked if the goals and objectives would be part of the screening alternatives, and if the RAC would be able to review them. Wilhelm hoped that the RAC’s goals which were voted on as well as the final goals would be the same, and stated that the screening criteria would be presented to the Council prior to proceeding with the draft EIS (DEIS).

Redpath, in response to Achitoff’s concern, stated that the goals and objectives will be carried out and decided prior to the development of the DEIS. Johns noted that as the RAC is an advisory body, its goals and objectives of the RAC may not be those of the agency. Roy Morioka asked if Tetra Tech had the goals and objectives, and Redpath stated that the NMSA, EO, and the “non-fishing” goals and objectives are all presently available. Gary Dill asked about social impacts and technology consequences. Redpath gave assurance that it would be part of “affected development”.

The “Sanctuary Designation Timeline” was then reviewed, and included the following: (1) July 2004 – Recommendations from RAC on fishing; (2) September 2004 – 120 days WPFMC review of 304(a)5 begins; RAC meeting to review 304(a)5 package; (3) Spring 2005 – DEIS released for public comment; (4) Fall 2005- Final EIS (FEIS) released; (5) Early 2006 – Designation decision. Wilhelm noted that this is a “current” timeline and is subject to change. Fielding concluded the review by iterating that the RAC would take action on the subcommittee’s recommendations on fishing at this meeting.

John then announced that official photos of the members of the RAC would be taken by Andy Collins of the Reserve staff.

VI. SUBCOMMITTEE RECOMMENDATION AND DISCUSSION ON FISHING ALTERNATIVES RESOLUTION

Bill Gilmartin stated that the resolution displayed on-screen for discussion, was drafted at the last RAC meeting, and stated that the subcommittee based its “no commercial fishing” recommendation on a number of factors, rather than simply on the Sustainable Resources Group’s (SRG) report. Johns commented that the State of Hawai’i (SOH) would not currently support the language on Sections D, E, F, due to possible impacts to SOH waters and departures from the EO. He noted that it is possible that the best available science could support limited bottomfishing and recreational fishing, and policy decisions may yield a limited fishery. Achitoff stated that sanctuaries may be inconsistent in one direction or another. Morioka noted that his concern was that SRG’s input was utilized as guidance to the RAC, and asked if it was based on scientific data or primarily “touch and feel”. He stated further that if the subcommittee utilized SRG’s

report as “gospel” what science was used, and that if none were used in the subcommittee’s decision, was the resolution based on “ideals”, “values” and “guts” .

Achitoff stated that the subcommittee did not use the SRG report as “gospel”. The subcommittee considered expertise independent of SRG and was guided by goals and objectives as they existed to come up with the best available science. Johns asked, and Achitoff confirmed, that the precautionary principle was used in the draft resolution. Linda Paul confirmed that the goals and objectives approved by the RAC were the “guiding light” for the fishing resolution.

Morioka asked whether the subcommittee was reliant on the National Marine Fisheries Service (NMFS), Pacific Islands Regional Science Center (PIRSC) for available science elements. Achitoff replied that SRG conducted interviews with PIRSC. Achitoff directed him to the list of subcommittee meetings that had been going on for months. Morioka noted for the record that the WPFMC did not find the SRG report to be science-based.

Gary Dill stated that he was present at the initial fishing subcommittee meeting and that the substance of the meeting was on the restrictions of the EO, and that consequently there was no discussion whatsoever as to any prohibition of fishing that came later.

Bill Gilmartin called for discussion on the recommendations noted in the draft resolution regarding proposed sanctuary fisheries alternatives as distributed, stating that the resolution follows the original recommendations which were distributed at the last meeting. Johns then led the discussion on the following fisheries recommendations:

Recommendation A: Prohibition of commercial crustacean fishery. Aila noted that the science based formula can be wrong, as apparently was the case in the crustacean fishery, resulting in its collapse. Dill asked whether there were any “hard evidence” of lobster fishing impacting the coral reefs. Gilmartin responded that live coral has been entangled in lobster trap lines. L. Paul noted that fisheries cannot be taken apart, that the removal of a lot of one species impacts coral ecosystems. Dill believed that the EO provides for a lobster fishery.

Recommendation B: Prohibition of precious coral fishery. L. Paul suggested that the EO already prohibits precious coral fishery.

Recommendation C: Prohibition of aquaria species and live fish trade species, and coral, live rock, algae, sponges, and other invertebrates. Gail Grabowsky expressed concern that a number of other possible organisms, such as urchins, were not included in this list. Achitoff and Schug offered that this language went to the notion of new fisheries that do not exist now, would also be prohibited. Schug, in speaking to the exclusion as expressed by Grabowsky, stated that the list was not exhaustive of all that was possible. Johns suggested that Recommendation C was really meant to capture all new or “other “ fisheries and that further work on the language be done during the day.

Recommendation G: Continue prohibition of pelagic longline fishing within 50 nautical miles around the NWHI. Gilmartin explained the history. No new monk seal interactions after recommendations by WPFMC and NMFS, and subsequent rule making in 1991 establishing the Protected Species Zone in a 50-mile radius of the NWHI.

Recommendation D: Prohibition of recreational fishing after one (1) year from date of Sanctuary designation. Rick Gaffney counter proposed a limited recreational fishery that could also protect the ecosystem. Johns asked for the rationale of the subcommittee and Gaffney's recommendation for closing recreational fishing. L. Paul explained that the subcommittee did not approve of handlining but thought that pole and line and trolling would be acceptable if properly zoned. Schug explained that they were trying to make sure "goals and objectives" and "precautionary approach" were applied consistently by the subcommittee, as put forward by the SRG report and other sources. Schug further noted that utilizing equal filters for fisheries resulted in the suggestion of no recreational fishing along with the other fisheries. David Laist of the Marine Mammal Commission requested that there be a requirement to report catch from any approved fishery. Achitoff stated his concern that the recreational fishing to date, has been confined to Midway. Aila stated that reports on Midway were to be provided by the company that managed Midway. Beth Flint confirmed that data were taken and by the Midway Refuge managers. Achitoff brought up the notion that most recreational fishing occurs out of Midway. Dill pointed out that recreational fishing from Midway went well into the Reserve and the language relative to "buy out" of existing permits be deleted. Morioka pointed out that there was recreational fishing in the NWHI, and that is probably the reason behind the EO addressing recreational fishing.

Recommendation E: Prohibition of commercial bottomfish/pelagic fishery: Johns pointed out the SOH has always supported the limited existing bottomfish fishery and does not think that position has changed. Morioka noted that both the EO and the NMSA envision sustained use, along with cultural uses. Laist expressed his concern about the linkage of bottomfish with other species in the trophic web. The role of individual species in the food web is often not totally considered in terms of the individual ecological components. Laist stated his fear that bottomfish could be managed using the precautionary approach, and that some other species, such as spiny lobsters, could be depleted. L. Paul pointed out that a science report was used in the subcommittee's recommendation to close the bottomfish fishery. It also addressed Native Hawaiian commercial permits in the resolution. Achitoff is concerned that the management of the bottomfish by WPFMC has not used the precautionary approach in the past—an entity with a poor track record to date in sustainable fishery management. Schug expressed his personal opinion, not really talking about sustainable fisheries, but, rather, maintaining and restoring natural ecosystems. Schug is uncertain that any type of fishing can be carried out relative to a natural ecosystem, and admitted his view of a natural ecosystem does not include the presence of man. Morioka acknowledged comments about WPFMC and noted that they have been able to focus on the concerns that were raised, and stated that through efforts of Kitty Simonds WPFMC has its own Pacific Science Center specific to the Exclusive Economic Zone (EEZ), observers on fishing vessels better able to address concerns about genetics, and is headed toward better science and management.

Laist asked whether bottomfish can be released after air bladder damage, and Roy answered in the affirmative. Aila asked about the reason for the one-year grace period for phasing out the fisheries including bottomfish, to which Achitoff answered that it was thought necessary for compensation, buy out, and closure. Aila suggested that the one-year period may be too short, and suggested that alternatives be considered. Achitoff explained that he has worked on the “buy out” concept, and has received some interest from congressional delegation, but strong opposition from Kitty Simonds of WPFMC. Johns suggested that the RAC may not have a unanimous decision on fishing alternatives, and asked the RAC to take time and thought before voting.

Recommendation F: Prohibited commercial pelagic fishery: Gilmartin stated that this fishery is tied to the commercial bottomfish due to the fact that the same vessels are included in both fisheries. L. Paul indicated that there are private fish aggregate devices (FADs) in the NWHI. Schug stated that these are Hawai’i based boats that carry no Federal permits. Wilhelm pointed out that in 2000 there were nine (9) boats fishing in the NWHI and possessed licenses to sell.

Johns call for a 20-minute break at 10:50 a.m. Reassembly was followed by discussion on “Subsistence Definition” .

VII. SUBSISTENCE DEFINITION DISCUSSION

Aila referred the RAC to his written subsistence definition as circulated and as noted on-screen, and included herein:

“Subsistence practices and use shall mean the Native Hawaiian use of ocean resources for the purposes of perpetuating traditional knowledge, taking responsibility and caring for the environment, direct personal consumption while staying in the NWHI; and strengthening cultural and spiritual connections to the NWHI. The sale of any marine resources is prohibited under this definition. Provisions may be made under this definition to include the customary practice by Ni’ihau and Kaua’i families to travel to and bring back ocean resources for community sharing.”

Aila emphasized the cultural and spiritual connections of fishing for Hawaiians and that therefore subsistence fishing belonged best with Native Hawaiian Cultural Practices, rather than as a fishing category. Part of a larger context is that fishing is not emphasized, but, rather, the perpetuation of traditional knowledge and taking responsibility and caring for the environment. The sale of fish would be prohibited as it never existed in the olden times. He further noted that there may be provisions for people on Kaua’i and Ni’ihau to make traditional voyages to the NWHI. Kekuewa Kikiloa pointed out that cultural practices are meant to be symbiotic, and ancients not only harvested but also gave back to the ocean in many ways, including proactive ways to take care of the environment, not just harvesting and exploiting, not how much you can take, but how much you can give back.

Johns asked about how protected species such as sea turtles would be treated within subsistence, to which Aila stated that current laws would be respected, but exemptions to U. S. laws may be requested in the future where it would be appropriate to take a turtle for cultural purposes. He noted that the intended users of the terms of subsistence are Hawaiians able to trace their ancestry back to 1700's (1776). Family sharing trips included annual gatherings by people from Ni'ihau and Kaua'i. When conditions were favorable it became a rite of practice to complete a trip to the NWHI to collect bird eggs, turtles, and fish. It was important to gather animals from the NWHI because of its mana. The po'o, or head of the expedition would be in charge of governing the appropriate extraction, gauged by physical, spiritual and cultural parameters. Aila stated that reporting of "how many of what is taken" would not be a problem with regard to significance and kaona. If there is certain religious significance it may or may not be right, or it may be taken out of context. The reasons for certain religious practices may not be revealed. From cultural and spiritual perspectives, ancestors would measure conduct. Grabowsky asked about the use of modern equipment and danger of over harvesting with modern equipment. Aila responded that living Hawaiians will monitor themselves, and Hawaiian ancestors will judge the practitioners. Dill asked about the current level of trips from Ni'ihau, Kaua'i or elsewhere. Aila stated that he made a trip to Midway. Hokule'a engaged in subsistence fishing. Kikilo'i also was involved in a trip to the NWHI on the NOWRAMP 2002 expedition. Native Hawaiians were not asked to look at other non-Hawaiian subsistence issues.

L. Paul asked for a better definition of cultural practices in the NWHI, and pointed out the difference between "subsistence" and "sustenance". Wilhelm pointed out that "recreational" and "sustenance" fishing may be merged, but that right now they are thought of as three types of activities (subsistence, sustenance, and recreational). Achitoff asked for a coordination of Native Hawaiian subsistence activities, pointing out that one subsistence trip may not be a problem, but 20 trips could cause problems. Aila responded that a gathering of Native Hawaiians is planned for this August at the University of Hawaii at Manoa to gather information, ensure communication, and other actions to prevent overharvesting. Aila pointed out that Native Hawaiian uses are driven by intent. If the intent is not pono, the trip will not occur.

Hunter asked if subsistence fishing is separate from other cultural practices. Aila responded that there are other customary practices, such as the collection of bird feathers, that would not be included in subsistence fishing, stating that it is subsistence in a larger practice. Laist reasoned that a subsistence data base would be considered as part of the DEIS. Aila could not say for sure whether the intent of the cultural trips could be shared with the "non-Native Hawaiian community", such as disclosure in an EIS. Native Hawaiians fear that some cultural practices may be taken out of context, but management practices may be shared.

A lunch break was then called by Vice-Chair L. Paul. The vote on the fishing subcommittee recommendations and goals and objectives were deferred as an action item to the following day's meeting. The meeting resumed at 1:10 p.m. with discussion on the draft fishing goals and objectives, followed by Public Comment.

VIII. SUBCOMMITTEE RECOMMENDATION AND DISCUSSION ON THE DRAFT FISHING GOALS AND OBJECTIVES

Achitoff went through the draft as circulated and noted on-screen. He stated that all organisms under Objective B were meant to include all invertebrates and noted that the revised RAC resolution on fishing should mirror the goals and objectives. For example, changes made to the RAC Fishing Alternatives may include recreational and sustenance fishing, and thus the goals and objectives would be adjusted. Kem Lowry pointed out that the RAC alternatives are restrictive, and there must be a “back up” to be persuasive as a strong tie-in to goals and objectives of the NMSA or would recommendations from organizations such as the WPFMC be more persuasive. Ed Lindelof pointed out that the ultimate defense is that of fishery standards against goals and objectives of the NMSA, as opposed to the Magnuson Act, and noted that the drafted goals and objectives track well with the NMSA. Thompson requested that conservation practices of Native Hawaiians be considered as part of the deliberations. Dill stated that he would not take a million or more dollars to sell his bottomfish permit as a matter of principle, believing that the reasons for buy out are not good enough.

IX. PUBLIC COMMENT

L. Paul recognized Cha Smith of KAHEA and Cheri Recchia of The Ocean Conservancy. C. Smith noted her review of documentation and justification for the appropriate recommendation for “no commercial fishing”. She commented on the cultural importance of the NWHI, a place that is fragile, and not robust or resistant to changes, where there is little understanding of the life cycle of fishes targeted for harvesting, asking how can a management plan be developed without that information. Noting that this is the last predator dominated coral reef ecosystem on the planet, where lobsters were wiped out by bycatch, there is a legal mandate to protect the NWHI. Both kupuna and independent scientists have determined that there should be no fishing in the NWHI. C. Smith further stated that it is a losing money fishery that exists without enforcement and that management of the U.S. now flaunts the intent of the EO, pointing out the renewed lobster fishing renewal effort and that more poundage of bottomfish have been taken since the EO. She noted her belief that fishery management has been corrupt, and that the protection of the area is now up to the conservationists, and not fishery managers. She noted that a letter signed by 400 coral reef scientists calling for all action necessary including enforcement to protect the NWHI and prevent human impacts there, would be distributed on day two of this meeting.

Cheri Recchia commented that mariculture is not appropriate for the NWHI, that new fisheries should be prohibited, both target species and gear type. She noted that research and monitoring should be maintained, and that subsistence use should carry the modifiers “Native Hawaiian Subsistence Use” and “Non-Native Hawaiian Subsistence Use”. Similarly, sustenance should have predictions on impacts on ecosystem. She advised that bioprospecting and other extractions that are non-fishery based be addressed, and that Sanctuary rules do not preclude management-related extractions or introductions are

not totally banned if such interventions are needed. Recchia suggested that zoning be considered for any fishing that may be allowed, as well as zoning for other actions. Lastly, closing, she stated that the RAC should consider a limit of acceptable change standard. There is a question as to how much change is acceptable. Human-caused change may be acceptable, however, it may be politically unacceptable to set aside such a large area as completely off limits to “acceptable change”.

Following Public Comment, Fielding continued work on the Subcommittee’s Recommendation and Discussion on Fishing Alternatives Resolution, specifically on alternative language to submit for Recommendation D.

Gaffney’s suggestions regarded pelagic species, but the wording also includes ulua and amber jack, which are not pelagic species. Morioka suggested a “fix” to the language, noting that zoning must be a part of the development of the management plan, with continued input from the RAC before the management plan would be finalized. Lindelof suggested that the RAC gives guidance to NOAA during this meeting on zoning. Johns noted that zones should be in place for recreational fishing, stating that he would like to have the recreational fishing language to a place where it is acceptable to the SOH, perhaps language similar to the EO. Lowry also suggested that if recreational fishing was allowed, that there be a required monitoring program. Athline Clark disclosed that the SOH rules now include a continuation of trolling, ika shibi fishing, and bottomfish. SOH allows for recreational fishing that involves gear restrictions and zoning, and by permit and bag limits. The RAC had an open discussion about how the goals and objectives were used fairly to ascertain whether fisheries could be allowed. The Council also discussed the political ramifications of their fishing recommendations, and the “reasonable person” best associated with the RAC’s recommendations. Johns pointed out that the EO had a political base and support and that should the RAC depart significantly from the EO, there may be a loss of support for more stringent conservation than the EO provides.

Lowry suggested that there be a basic decision between “NO USE” in the proposed Sanctuary and some restricted use. Johns pointed out that all ramifications of the Council’s advice should be considered when the RAC makes its recommendations. The RAC shifted its deliberations from Recreational Fishing to A, B, C, G in the proposed RAC fishing alternatives. The following action item was then taken. Motion on the floor was then called and the following action was taken:

ACTION ITEM

Motion: To approve Fishing Recommendations A, B, C, G as well as the framework of the resolution. Final language included in attached resolution.

Proposed by: Paul Achitoff

Seconded by: Bill Gilmartin

Ayes: 12

Nays: 1

Abstention: 1

Approved by majority vote.

Discussion ensued on Recommendation H, where language changes were made. The question of sustenance was taken up. Wilhelm suggested that sustenance is always incidental to other actions, such as sailing or innocent transit.

XI: ADJOURNMENT

The meeting of Day One of the two-day meeting was adjourned at 3:30 p.m.

July 8, 2004

Day Two

ATTENDEES: [Advisory Council Members]: Paul Achitoff (Conservation); Louis “Buzzy” Agard (Native Hawaiian); Rick Hoo for Rick Gaffney (Recreational Fishing); Bill Gilmartin (Research); Gary Dill for Bobby Gomes (Commercial Fishing); Gail Grabowsky (Education); Cindy Hunter (Research); Tim Johns (State of Hawai’i); Kekuewa Kikiloi (Native Hawaiian); Bill Robinson (Pacific Islands Regional Office); Kem Lowry (Citizen-at-Large); David Laist for Lloyd Lowry (Marine Mammal Commission); Roy Morioka for Kitty Simonds (Western Pacific Fishery Management Council); Dwight Mathers, CDR (U. S. Coast Guard); Robert Smith (NWHI Reserve); Laura Thompson (Conservation); John Muraoka (Department of Defense); Don Palawski for Jerry Leinecke (U. S. Fish and Wildlife Service); Linda Paul (Conservation); Birgit Winning (Ocean-Related Tourism). Excused: William Aila (Native Hawaiian); Rick Gaffney (Recreational Fishing); Bobby Gomes (Commercial Fishing).

Absent: Ray Arnaudo (Department of State); Philip Taylor (National Science Foundation).

[Alternate Council Members (not representing voting members)]: Athline Clark (State of Hawai’i).

[NWHI CRER Staff]: Andy Collins; ‘Aulani Wilhelm; Malia Chow; Moani Pai; Mokihana Oliveira; Randy Kosaki; Hans Van Tilburg; Kaliko Amona; Tom Friel (NOAA Enforcement).

[NMSP Staff]: Edward Lindelof; Allen Tom.

[Members of the Public]: Kitty Courtney, George Redpath (Tetra Tech); Jarad Makaiau (WPFMC); Mike Tosatto (PIRO); Cha Smith (KAHEA); Greta Aeby (DLNR); Cheri Recchia, Warner Chabot (The Ocean Conservancy); Diana Leone (Honolulu Star Bulletin).

I. CALL TO ORDER

Chairperson Tim Johns called the meeting to order at 8:50 a.m. The opening pule was offered by Louis “Buzzy” Agard.

II. REVIEW AND APPROVAL OF AGENDA

Johns called for a motion to approve the revised agenda as circulated. It was so moved by Kem Lowry and seconded by Bill Gilmartin. Motion passed unanimously.

III. SUBCOMMITTEE DISCUSSION AND VOTE ON FISHING RECOMMENDATIONS

Fishing recommendations D, E, F, I, & J as noted in the RAC’s draft resolution for recommendations regarding proposed Sanctuary fisheries alternatives were discussed. A revised resolution regarding Recommendation D, Recreational Fishing, was circulated. Cindy Hunter suggested that the word “permit” be stricken in relation to recreational fishing, since no permits are needed federally, similarly, with Recommendation F, Commercial Pelagic Fishery, where there are no permits or buy out opportunities. The revised subcommittee recommendations included language voted on Day One of this meeting, plus the D, E, and F, language that needed to be discussed on Day Two.

Discussion pursued on the following. On-screen editing was managed by Emily Fielding.

Recommendation D. Prohibition of Recreational Fishing. Johns noted that Objective D, Alternative 2, has some changes from the version on the previous day, July 7th. Morioka suggested that some additional language be added, such as “bag limits” and “other management actions”. He also suggested that the boundary references be made clear, and included some of the language offered by Rick Gaffney. (All of these changes were captured by Emily.) Robert Smith explained that the standard for recreational fishing in the NWHI should be catch, tag, and release with fishes only kept for sustenance. Discussion ensued concerning whether or not recreational fishing could include rules related to charter fishing, recreational fishing would still need a cap within the sanctuary, and whether the cap is based on historic and new data. Reporting requirements would accompany the need to report catch and either NMFS or NMSP would issue permits to recreational fishers. Data would be analyzed by the appropriate agency, who would provide an interpretation and come to a conclusion as to whether ecosystem impacts are significant.

L. Paul makes the point that zones are needed in order to protect the ecosystem. Don Schug suggested “zoning” be substituted for time and area closures. Laura Thompson requested that there be no recreational fishing in the NWHI. Buzzy Agard stated his concern that by allowing recreational fishing, the government would give one group access to the NWHI and not other groups. Buzzy questions whether there is room for any fishing in the NWHI, and stated that habitats surrounding the atolls are too small to support fisheries. Gail Grabowsky expressed her concern about too many boats engaged in a recreational fishery. L. Paul noted that banning recreational fishing may win a battle but lose the war. Paul Achitoff worried that cruise ships would carry recreational fishing boats and lots of recreational fishing would occur. Kem Lowry recommended a limited recreational use as a principle. Rick Hoo was concerned that we are setting a precedent for special interests, such as those at Midway. Aulani Wilhelm noted that it sounds like the assumption is that recreational fishing permits would be issued by WPFMC, and that there is an opportunity to have the NMSP issue the permit, part of the recommendation would say they want us to do this.

Don Schug emphasized that catch and release should be made mandatory. Agard pointed out that the predatory fishes such as pelagic fishes may be appropriate for catch and release, but that the ecosystem may be able to be managed for near shore fisheries, while he is against fishing for pelagics in the NWHI. Schug recommended that the word pelagics be removed, and that fish species be targeted for recreational fishing.

The following vote was then taken. No motion was required since it came from the subcommittee:

Resolution Alternative and Concensus Alternative

1. Vote on Subcommittee Alternative – and phase out of recreational fishery after one year.
 - D. Subcommittee Resolution
Ayes: 2
Nays: 9
Abstain: 2
Disapproved by majority vote.
 - D. Concensus Alternative (or “Plausible Alternative”). Final language included in attached resolution.
Ayes: 9
Nays: 4
Approved by majority vote.

A 10-minute break was then called and the meeting reconvened at 11:15 a.m.

III. SUBCOMMITTEE DISCUSSION AND VOTE ON FISHING RECOMMENDATIONS (Cont’d.)

Following the break, Johns called for discussion on Recommendations H, I, J. Regarding Recommendation H, Schug and L. Paul suggested language that NMSP permits are part of Native Hawaiian subsistence. Wilhelm explained the emphasis on Ni’ihau and Kaua’i, Native Hawaiian families that have lineage to those traditions, stating that there is knowledge that is not documented that has continued, where data from a Western mind is not culturally appropriate. A motion and “straw” vote was then taken on subsistence fishing:

- H. To add Native Hawaiian in front of Ni’ihau, and the phrase “subject to the appropriate NMSP permit”. Final language included in attached resolution.

Proposed by: Laura Thompson
Seconded by: Bill Gilmartin
Ayes: 9
Nays: 2
Abstain: 2
Approved by majority vote.

Discussion on sustenance fishing ensued, which led to the following action on Recommendation I.

- I. Motion: To allow sustenance fishing only as incidental to other permitted activity, with all catch consumed while in the NWHI, subject to regulations set forth in the management plan. Final language included in attached resolution.

Proposed by: Cindy Hunter
Seconded by: Laura Thompson
Ayes: 12
Nays: 1
Approved by majority vote.

Discussion then focused on Recommendation J which led to the following action:

- J. Motion: To approve Recommendation J prohibiting all fishing not specifically allowed in the Resolution. Final language included in attached resolution.
Proposed by: Linda Paul
Seconded by: Cindy Hunter
Ayes: 12
Nays: 1
Approved by majority vote.

A discussion on commercial bottomfish requirements followed, including: (1) limited entry; (2) seven permits in the Ho'omalū Zone and ten permits in the Mau Zone; (3) permits are non-transferable and renewable annually; (4) limited to vessels less than 50 feet; (5) must attend a protected species workshop; (6) must notify the Regional Director. Lowry asked what would be lost if the RAC adopted the language of the EO rather than the subcommittee's recommendation.

Bill Gilmartin explained the position of the fishing subcommittee on Recommendation E, commercial bottomfishing, proposed to be prohibited, which included the following: (1) interactions with monk seals; (2) extraction that adversely affects the ecosystem, especially from a multi-species point-of-view; and (3) that the recommendations were based on vision, mission, goals and objectives. Don Schug pointed out that recreational fishing can be allowed through the use of tools and asked why similar tools may not be used to manage bottomfish. Achitoff pointed out that minimum impacts of a commercial fishery are much greater than those of a recreational fishery. Morioka stated that he is against the subcommittee resolution, representing WPFMC, and based on Magnuson, and the EO and SOH positions. Hunter pointed out that the RAC's mission is quite different than WPFMC. Schug noted that the EO places restrictions unlike any that WPFMC places. Laist noted his support of the proposal to phase out commercial bottomfish fishery as stated in the resolution and cites uncertainties with knowledge of the stocks.

Achitoff stated that people should keep in mind that whatever the RAC approves would be the best that could possibly be gotten. He noted that the EO has never been embraced by this Administration and noted no reason why the Administration would carry out a restated EO. He believed that should the RAC decide to allow bottomfishing to exist, that whatever WPFMC sends to DOC for regulations would be adopted. Gilmartin stated that he has no problem with a phased-out commercial bottomfish fishery. Morioka stated that the Central Pacific Fishery Commission may take heed from what has happened in the Atlantic where recreational fishermen have been limited, his point being that recreational fishing would be regulated.

Mike Tosatto stated that the majority of recreational fishing issues are in SOH waters and that a growing number of issues could lead to management of recreational fisheries by NOAA. Athline Clark stated that the SOH is supportive of the provisions of the EO relative to bottomfish and noted that whether or not the fishery is phased out of the NWHI, there would not be more permits allowed in the Main Hawaiian Islands (MHI). Decisions for bottomfish in the NWHI can affect stocks in the MHI. L. Paul pointed out that the jurisdiction of the RAC is limited to the NWHI, and not the MHI. The EO caps were intended to keep bottomfish industry going into the future, at a capped level, according to Ellen Athas. Schug believed that Native Hawaiian permits were also meant to be phased out and believed that in the interim period between the adoption of rules and a phase out, there should be management actions such as zoning. L. Paul, in rhetorically asking who would manage the fishery in the NWHI, read the following Draft Action Memorandum rendered at the WPFMC's Ecosystems and Habitat 123rd Council Meeting, June 21-24, 2004, as follows:

“In regards to the Northwestern Hawaiian Islands, The Council

1. Directs Council staff to work with NMFS PIRO and National Marine Sanctuary Program to develop a Memorandum of Agreement or other form of agreement with NOAA to retain primary responsibility in developing and promulgating fishing regulations within federal waters of the proposed NWHI National Marine Sanctuary.”

Ed Lindelof noted that the NMSP has statutory authority to manage fisheries, but the decision has not been made as to whether NMSP will manage all or part of the fisheries in the NWHI. Achitoff stated that he is not concerned on who would manage the bottomfish fishery for one year, but would be very concerned if the phase-out period is for a longer period such as 5 to 10 years, as he did not want to have input into management during any phase-out. Achitoff suggested language that may stipulate the management agency during the phase-out, or perhaps a NOAA request for RAC/SAC advice regarding management during the phase-out. Lloyd Lowry, through Achitoff, was quoted as wanting a relatively short phase out period.

This discussion led to the following action:

- E. Motion: To approve Recommendation E.
Proposed by: Laura Thompson
Seconded by: Cindy Hunter

Gill noted that the two provisions violate both the intention and direction of the EO, and therefore would or may be unlawful. He encouraged compromise on the hard position of the RAC to extinguish the bottomfish fishery. The issue of phase out was further discussed and Johns suggested a language recommendation and that the vote first be on the original subcommittee recommendation on bottomfishing. This lead to the following:

Motion: Reject original subcommittee Recommendation E and replace it with Alternative 1.

Proposed by: Paul Achitoff

Seconded by: Cindy Hunter

Ayes: 10

Nays: 0

Abstention: 3

Approved by majority vote.

Motion: To accept the replacement language as Alternative 1. (now called E)

Proposed by: Cindy Hunter

Seconded by: Paul Achitoff

Ayes: 8

Nays: 3

Absention: 1

Approved by majority vote

R. Smith called for a revote and discussion. Achitoff asked for a review of the charter on the matter of whether Dill can vote on commercial fishing issues. Dill noted that he represents a class of individuals. Johns inclined to allow the vote and then seek clarification from the Department of Commerce (DOC).

Re-vote on Recommendation E:

Ayes: 9

Nays: 3

Abstention: 1

Approved by majority vote

Discussion on Recommendation F ensued and led to the following:

Motion for original F:

Proposed by: Paul Achitoff

Seconded by: Cindy Hunter

Nays: 13

Motion for new F:

Proposed by: Linda Paul

Seconded by: Paul Achitoff

Schug stated his concern that allowing recreational but not commercial leaves the impression of providing for the “rich and famous”. Morioka also spoke against the motion in favor of the EO. Laist wondered how far the SOH would want to depart from the EO. Johns stated clearly that currently the SOH will not support an outright ban on commercial fishing. Morioka noted that “the process” is one where people may change their minds. Agard voiced his opposition against any commercial fishing within the proposed sanctuary. L. Paul took offense to Schug’s characterization of recreational

fishing for the “rich and famous”, stating that Agard, as a fisherman who fished there for many years affected the ecosystem in such a way that this Council can still go back and undo what was done on recreational fishing. Gail Grabowsky noted that it is harder to define the impacts of pelagic take on a small scale. Thompson stated her desire to undo the recreational fishing vote. Gilmartin believes pelagic (non permitted) fishery is small and could be managed. Schug stated that if the RAC bans pelagic then it should also ban recreational fishing. Tosatta noted that bottomfish boats would not necessarily convert to pelagics, and some pelagic fishery should be maintained. Kem Lowry stated that it would be a mistake to vote on the ban on pelagics as currently constituted.

Johns called for the vote on the motion on Recommendation F from the subcommittee.

Ayes: 4

Nays: 7

Abstention: 2

Disapproved by majority vote.

Hunter commented on being uncomfortable with what was done at this meeting, stating that the RAC had lost its conservation mission. L. Paul stated that actually the RAC accomplished much, pointing out all of the fisheries that had been eliminated, and that the RAC had not lost sight of its goal.

The following action was then taken on alternative F.

Motion: To take a vote on Alternative F, commercial pelagic. Final language included in attached resolution.

Proposed by: Linda Paul

Seconded by: Tim Johns

Ayes: 6

Nays: 4

Abstention: 3

Approved by majority vote.

IV. SUBCOMMITTEE RECOMMENDATION AND DISCUSSION ON STATE NWHI MARINE REFUGE (Clark/Paul)

Johns recused himself from this discussion. Clark presented this segment and explained the entire process, starting with public hearing schedules throughout the state, website posting of the rules, options for providing input; compilation and procedural steps for accepting staff recommendations, hearing additional comment, choosing to amend them, agreement to forward to governor, or process through another round of public hearings. She noted that final recommendation would be taken by the end of the year 2004.

Concerns that prompted changes included shifts coming to SOH waters; establish access and regulate activity; and data of activity in SOH waters. Between the first proposal and the second a number of things changed, almost all of SOH waters are protected and additional data were expected. She noted that there were high rates of vandalism and a coral bleaching event and that all of these areas were expanded in the proposed history

and regulation. L. Paul stated that 13-60.5-5B must be changed. Clark stated that input on language to the formal resolution would better the effort.

V. PUBLIC COMMENT

Cha Smith of KAHEA stated that talking points of proposed regulations language needed revisions. On the intent of the Refuge, since there is no enforcement it would be virtually impossible to allow activity in these waters, as being the most sensitive and critical they therefore warrant greatest protection. C. Smith referred everyone to review “Talking Points for DLNR’s Proposed Refuge for the NWHI”, included in a handout distributed at this meeting.

Cherie Recchia of The Ocean Conservancy, expressed continued support of the NWHI sanctuary designation process.

VI. STATE NWHI MARINE REFUGE PROPOSED RULES VOTE

L. Paul stated that fishing should not be allowed as close as three miles, and called for any additions, corrections or deletions to the draft resolution. Laist pointed out that in the past extractive activities were not covered under NMFS. Bill Robinson stated there are probable rules to be broken, and queried who makes the call should a vessel run aground and places some risk on the ecosystem. Clark stated that the state is not in agreement with not allowing noncommercial, educational and tourism purposes to occur in state waters, obviously is different so we have to go against it. Laist stated that it may be a semantics situation that may be satisfactorily addressed.

Motion: To send this recommendation to the State of Hawai’i. Final language included in attached resolution.

Proposed by: Gail Grabowsky

Seconded by: Kem Lowry

Ayes: 10

Nays: 1

Approved by majority vote.

VII. RECOMMENDATIONS OF THE RAC SUBCOMMITTEE ON GOAL AND OBJECTIVES FOR FISHING

Motion: To accept the fishing goal and objectives as revised. Final language included in attached document.

Proposed by: Linda Paul

Seconded by: Paul Achitoff

Ayes: 11

Nays: 0

Approved by majority vote.

It was suggested that RAC meeting scheduled for August be cancelled, and that a day and a half meeting be tentatively scheduled for September 29, 2004 for RAC review of the WPFMC package.

Johns thanked everyone for their time and effort, stating this to be one of the most difficult RAC meetings held to date. Ed Lindelof agreed it was the sincerity of deliberations that made this an excellent and impressive process.

VIII. ADJOURNMENT

The meeting adjourned at 4:00 p.m.

NORTHWESTERN HAWAIIAN ISLANDS
CORAL REEF ECOSYSTEM RESERVE ADVISORY COUNCIL

September 8, 2004

To: Mr. Robert P. Smith, Reserve Coordinator
NOAA National Ocean Service, Northwestern Hawaiian Islands Coral Reef Ecosystem
Reserve
308 Kamehameha Avenue, Suite 208
Hilo, HI 96720

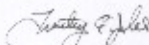
Re: Resolution Regarding Proposed Sanctuary Fisheries Alternatives

Dear Mr. Smith,

This attached resolution is being sent to you pursuant to an action item approved by the
Northwestern Hawaiian Islands Coral Reef Ecosystem Advisory Council at its July 7-8, 2004
meeting.

Thank you for attention to this matter.

Sincerely,



Timothy E. Jahra
Chairperson

**RESOLUTION REGARDING PROPOSED SANCTUARY
FISHERIES ALTERNATIVES**

**RECOMMENDATION OF THE NWHI CORAL REEF ECOSYSTEM RESERVE
ADVISORY COUNCIL
TO
THE NWHI CORAL REEF ECOSYSTEM RESERVE**

JULY 8, 2004

The Council notes the following:

1. The NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC) and its Fisheries and Zoning Alternatives Subcommittee (FZAS) have reviewed the Executive Orders establishing the Reserve, the contract report of Sustainable Resources Group International, Inc. (SRG), a summary presentation on this report by contractor Bruce Wilcox regarding fishing in the NWHI, the recommendations of the Hawaiian Monk Seal Recovery Team, and heard expert presentations on the status of some fisheries, endangered and endemic species, sea birds, coral reefs, and other important components and characteristics of the NWHI ecosystems. Some RAC members participated in the various fisheries discussion groups managed by SRG in developing their report;
2. The RAC and FZAS also reviewed maps with various zoning alternatives prepared by NOS staff and discussed zoning as a strategy to protect resources in the Reserve, and queried experts on the appropriateness of zoning for protection of endangered species and for defining resource uses;
3. The RAC has considered its recommended NWHI Sanctuary Goals and Objectives in developing its recommendation on Fisheries and Zoning Alternatives.
4. The RAC has developed its fisheries and zoning alternatives recommendations for the entire NWHI sanctuary "study area" which includes state and federal waters out to 50 nautical miles;
5. The primary purpose of the proposed sanctuary is to achieve strong and long-term protection of marine ecosystems in their natural character (Draft VMPO, RAC Advice and Recommendations 1/22/04);
6. The principal management goal of the sanctuary is to protect, maintain, and restore where appropriate, the natural biological communities, including habitats, populations, native species, and ecological processes of the proposed sanctuary as a public trust for current and future generations (Draft VMPO, RAC Advice and Recommendations 1/22/04); and,
7. The supporting data and information used to develop these recommendations includes, but is not limited to the references cited herein.

Regarding fisheries, the Council recommends that:

- A. Commercial crustacean fishery be prohibited in the proposed NWHI Sanctuary.

Supporting Data and Information:

- Lobsters and other crustaceans are important components of endangered monk seal diets, especially for females and pups (MacDonald 1982; *Proposed Designation of Critical Habitat for the Hawaiian Monk Seal in the NWHI: Draft EIS 1980*; Hawaiian Monk Seal Recovery Team Recommendation 2000)
- Metapopulation structure increases vulnerability to area-based overfishing (SRG, *Fishing in the Proposed NWHI NMS*, 2004)
- Ecosystem effects have been clearly demonstrated, including spiny lobster stock reduction and shift in relative species abundance from spiny to slipper lobster (DiNardo and Marshall 2001)
- Conventional estimation methodologies inadequate for estimating metapopulation dynamics (SRG, *Working Documents: Crustaceans*, 2004; DiNardo and Marshall 2001)
- Collapse of spiny lobster populations in 1990's with no indication of recovery (Clarke et al. 1992; DiNardo and Marshall 2001)
- Fishery closed in 2000 by NMFS, in face of court injunction based on threat to endangered Hawaiian monk seal and due to uncertainty of stock estimates
- Numerous management measures adopted under the Crustacean FMP did not protect the spiny lobster populations from collapse; management measures requiring release of gravid females and lobsters below minimum legal size indicated close to 100% discard mortality (DiNardo et al. 2002)
- Hawaiian Monk Seal Recovery Team recommended closure of the fishery (2000)

B. Commercial precious coral fishery be prohibited in the proposed NWHI Sanctuary.

Supporting Data and Information:

- Information and data on distribution, species composition, growth rates, or abundance are lacking (SRG, *Working Documents: Precious Coral*, 2004)
- No life history data on precious corals in the NWHI
- Limited life history data on precious corals in the main Hawaiian Islands indicate that precious corals are extremely susceptible to overfishing
- Evidence of endangered monk seal foraging at deep depths in precious coral beds (Parrish et al. 2002)
- No commercial fishery has existed in the NWHI except in 1988, the domestic vessel Kilauea (with federal permit) used a dredge to harvest precious coral beds at Hancock Seamount, but the operation was discontinued because of insufficient harvests of high quality coral

C. Fisheries including aquaria species and live fish trade species, and coral, live rock, algae, sponges, and other invertebrates be prohibited in the proposed NWHI Sanctuary.

Supporting Data and Information:

- Existing state regulations prohibit taking coral and live rock

- The negative effects of directly harvesting and removing large amounts of coral reef and coral reef habitat on reef fish populations and ecosystem functions are widely known. NOAA and the US Coral Reef Task Force developed a key objective to reduce exploitation of reef organisms of the aquarium trade that bans the commercial domestic collection of coral and live rock, and monitors collection of other species (EO13089: *Coral Reef Protection* 1998; NOAA and the US Coral Reef Task Force, *A National Coral Reef Action Strategy* 2002)(Note: WPFMC agrees that harvesting coral and live rock in large amounts is harmful to coral reef ecosystems and should be prohibited in the NWHI)
- Numerous studies show that aquaria collection can have substantial effects on Hawaiian Island coral reef ecosystems (Kolm and Bergland 2003; Tissot and Hallacher 2003; Tissot et al. 2004)
- No data on NWHI distribution, population dynamics or other characteristics of aquarium species or sponges

D. Limit recreational and charter fishing through bag or size limits, gear restrictions, catch and release requirements, time and area closures, zoning, and NMSP permits with reporting requirements and other management measures, to designated areas of the Sanctuary, where interactions with endangered Hawaiian monk seals, migratory seabirds, and other protected wildlife have been demonstrated as being very low, and the fishery can be monitored to collect data for ongoing evaluation of impacts. Such fishing shall be limited to trolling and pole and line fishing for such species that the NMSP, with concurrence by the Reserve Advisory Council, may deem appropriate. Fish caught for recreational purposes shall not be sold, traded, or bartered. A cap on levels of recreational fishing shall be established within one year after sanctuary designation that shall not exceed the level existing at that time.

Supporting Data and Information:

- EO caps that set a pre-2000 level of recreational fishing take are not quantifiable due to lack of data, therefore other measures must be taken to limit catch and reduce impacts to the ecosystem
- No information is available on the number of people, effort, catch, or value of any pelagic charter fisheries that have been active in the NWHI (SRG, *Working Documents: Pelagic and Recreational Fisheries*, 2004)
- Limited analysis of data and information to assess recreational fishing-related impacts on ulua population at Midway (Friedlander 2003)
-

E. Commercial bottomfish fishery be prohibited in the NWHI Sanctuary within one (1) year from date of Sanctuary designation. Alternatives to facilitate closure of this fishery shall be evaluated as part of the EIS for sanctuary designation including buy-out of existing permits, or other closure options. In the interim phase out period, limit existing bottomfish fishing, permitted as of the year 2000, through catch and size limits, gear restrictions, time and area closures, zoning, and NMSP permits, to designated areas where interactions with endangered Hawaiian monk seals, and other protected wildlife have been demonstrated as being very low, and with reporting requirements that ensure the fishery can be monitored to collect data

for ongoing evaluation of impacts. Such fishing shall be limited to federal permittees, and gear types to handline and trolling.

Supporting Data and Information:

- Bottomfish have life history attributes that make them susceptible to overfishing, e.g., limited habitat, high-value snappers slow growing
- Endangered Hawaiian monk seals and Pacific bottlenose dolphins interact directly with NWHI bottomfish fishery (WPFMC, *Amendment to Bottomfish FMP, Bycatch Provisions*, 2002; Nitta and Henderson 1993; Nitta 1999)
- Schooling species highly vulnerable to fish finding technology (Kelly, *Subcommittee Presentation*, February 2004 ; SRG, *Working Documents: Bottomfish Fishery*, 2004)
- Consistent decline in catch per unit effort of bottomfish species; decline in mean weight of *onaga*; spawning ratio approaching 20% critical threshold level (at or near lower bounds of 95% confidence intervals) (SRG, *Working Documents: Bottomfish Fishery*, 2004)
- Socioeconomic impact of prohibiting fishery minimal especially if buy-out is an option; currently (2003), only five vessels fishing in Mau Zone
- Bottomfish fishery results in significant (25%) bycatch which is 10% higher than that reported in fishery logbooks (WPFMC, *Amendment to Bottomfish FMP, Bycatch Provisions*, 2002)
- Inappropriate management approach used, which considers the bottomfish species complex, multiple species with varied life history traits, as if it were a single species

F. Commercial pelagic fishery shall be limited through time and area closures, zoning, NMSP permits, and other management measures, to designated areas where interactions with endangered Hawaiian monk seals, and other protected wildlife have been demonstrated as being very low, and with reporting requirements that ensure the fishery can be monitored to collect data for ongoing evaluation of impacts. Such fishing shall be capped based on reported landings for the year preceding Dec 4, 2000. All Fish Aggregation Device fishing shall be prohibited, and fishing gear limited to handline, pole and line, and trolling.

Supporting Data and Information:

- Inadequate data to assess effects on target species, warrants precautionary approach
- Interactions with protected species with potentially negative consequences

G. Continue to prohibit pelagic longline fishing within 50 nautical miles around the NWHI.

Supporting Data and Information:

- In 1991 National Marine Fisheries Service implemented a rule prohibiting longline fishing within 50 nm of the NWHI, the result of changes in the pelagic longline fishery and interactions between the fishery and the endangered

Hawaiian monk seal. The rule provides protection (Protected Species Zone) around monk seal breeding and foraging areas to eliminate incidental take from longline fishing operations. (WPFMC, *Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region*, 1991)

- H. Native Hawaiian subsistence fishing practices may continue to the extent consistent with existing law, subject to appropriate NMSP permitting and reporting requirements. Native Hawaiian subsistence practices shall mean the Native Hawaiian use of ocean resources for the purposes of perpetuating traditional knowledge, taking responsibility and caring for the environment, direct personal consumption while staying in the NWHI; and strengthening cultural and spiritual connections to the NWHI. The sale of any marine resources is prohibited under this definition. Provisions may be made under this definition to include the customary practice by Native Hawaiian Ni'ihau and Kaua'i families to travel to the NWHI and bring back ocean resources for community sharing.**

Supporting Data and Information:

- Aspects of subsistence use are currently practiced, such as use of the NWHI for cultural renewal, ~~and~~ education, and culturally-based gathering of marine resources
 - Native Hawaiian fishers expressed strongly held beliefs and ethical dimensions of fishing in the NWHI, indicating fishing practices and fishery management has not been consistent with values
 - Defined as culturally based gathering; not a lot of activity currently (SRG, *Working Documents: Subsistence Fishing*, 2004)
 - Cultural use not considered a fishery
 - Subsistence fishing as a part of traditional cultural practices ~~was described as~~ includes catching fish for on-site consumption as part of a larger cultural activity
- I. Sustenance fishing shall be allowed only as incidental to other permitted activity, with all catch consumed while in the NWHI, subject to regulations set forth in the management plan.**
- J. All fishing not specifically allowed herein shall be prohibited.**

RAC Recommendations on
Goals and Objectives for Resource Harvesting
7/22/04

Goal 7: To ensure ecosystem integrity, rigorously restrict resource harvesting, including fishing, to areas where interactions with endangered Hawaiian monk seals, migratory seabirds, and other protected wildlife have been demonstrated as being very low, and the harvest can be monitored to collect data for ongoing evaluation of impacts. All harvest shall be subject to NMSP permits and reporting requirements and other management measures.

Objective A: Prohibit non-subsistence crustacean fishing.

Objective B: Prohibit all harvest of any coral, aquaria and live fish trade species, live rock, algae, sponges, and invertebrates.

Objective C: Limit recreational fishing, including both catch and release and catch and keep, through bag or size limits, gear restrictions, catch and release requirements, time and area closures, and zoning. Catch shall not be sold, traded, or bartered. A cap shall be established within one year of designation, that shall limit total catch levels so as not to exceed the level existing at that time.

Objective D: Phase out commercial bottomfishing within one year of designation, and analyze alternatives to facilitate closure of this fishery as part of the EIS development, including buy-out of existing permits, or other closure options. In the interim, limit federal permittees to those permitted as of the year 2000, through catch and size limits, gear restrictions, time and area closures, and zoning.

Objective E. Limit commercial pelagic fishery through time and area closures and zoning. Such fishing shall be capped based on reported landings for the year preceding Dec 4, 2000. All Fish Aggregation Device fishing shall be prohibited, and fishing gear limited to handline, pole and line, and trolling.

Objective F. Continue the prohibition of pelagic longline fishing within 50 nautical miles around the NWHI.

Objective G: Allow Native Hawaiian subsistence fishing practices to the extent consistent with existing law. Such practices shall mean the Native Hawaiian use of ocean resources for the purposes of perpetuating traditional knowledge, taking responsibility and caring for the environment, direct personal consumption while staying in the NWHI, and strengthening cultural and spiritual connections to the NWHI. The sale of any marine resources is prohibited. Provisions may be made under this definition to include the customary practice by Native Hawaiian Ni'ihau and Kaua'i families to travel to and bring back ocean resources for community sharing.

Objective H: Sustenance fishing shall be allowed only as incidental to other permitted activity, with all catch consumed while in the NWHI, subject to regulations set forth in the management plan.

Objective I: All fishing not specifically allowed herein, shall be prohibited.



AUG 2- REC'D

July 30, 2004

William S. Devick, DLNR
Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813

Re: Reserve Advisory Council Comments on the State Proposed Rules for the
NWHI Marine Refuge

Dear Mr. Devick,

This letter is in response to the enclosed resolution passed by the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council at their meeting July 8, 2004. I am writing this letter on behalf of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, through provisions contained in the charter for this organization, which specifies that requests for information, assistance of advice shall be made in writing and coordinated through the NOAA representative.

Enclosed please find the Reserve Advisory Council's resolution on the DLNR NWHI Marine Refuge proposal. We would appreciate you giving these recommendations strong consideration as you refine and finalize your proposal.

Sincerely,

Robert P. Smith
Reserve Coordinator
NWHI Coral Reef Ecosystem Reserve

Enclosure

cc:

Mr. Timothy Johns
Ms. Athline Clark
Ms. Moani Pai ✓



**RESOLUTION REGARDING STATE PROPOSED RULES
FOR THE NWHI MARINE REFUGE**

**RECOMMENDATION OF THE NWHI CORAL REEF ECOSYSTEM
RESERVE ADVISORY COUNCIL
TO
THE NWHI CORAL REEF ECOSYSTEM RESERVE**

JULY 8, 2004

The Council notes the following:

1. The NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC) and its Fisheries and Zoning Alternatives Subcommittee (FZAS) have reviewed the proposed Chapter 13-60.5 of Title 13, Hawaii Administrative Rules, entitled "Northwestern Hawaiian Islands Marine Refuge," submitted by the State of Hawaii, Department of Land and Natural Resources.
2. The Department of Land and Natural Resources will provide the proposed Rules for public review and comment in July 2004.
3. §13-60.5-5 of the State's proposed rules is inconsistent with the Goals and Objectives of the proposed Northwestern Hawaiian Islands Sanctuary.
4. The RAC will provide comment in the form of a letter to Robert Smith, Reserve Coordinator, indicating how the proposed rules should be changed to be consistent with the Goals and Objectives of the proposed sanctuary.

The Council recommends that:

Robert Smith to draft a letter to the Department of Land and Natural Resources, on behalf of the RAC, for submission as public comment on the proposed rules pertaining to the Northwestern Hawaiian Islands Marine Refuge. The letter should indicate that the RAC recommends the following:

1. The State of Hawaii, Department of Land and Natural Resources amend their proposed Administrative Rules pertaining to the Northwestern Hawaiian Islands Marine Refuge to make them consistent with the Goals and Objectives of the proposed Northwestern Hawaiian Islands National Marine Sanctuary.
2. The following section of Chapter 13-60.5 of Title 13, Hawaii Administrative Rules, should be changed to read:

§13-60.5-5 Permitted activities. (a) A person may, with valid permit issued from DAR, enter the refuge and take marine life for noncommercial purposes using the following methods and gear while in the refuge:

- (b) Trolling for pelagic species;
- (c) Pole-and-line fishing.
- (d) A person may only enter the refuge to engage in activities that do not degrade the coral reef ecosystem, related marine resources and species as specifically authorized by law for the following purposes:
 - (1) Noncommercial scientific, conservation or educational purposes;
 - (2) Non-extractive purposes determined through the permit review process to be compatible with the purposes of the Refuge; and
 - (3) Noncommercial subsistence, cultural, and religious uses by Native Hawaiians consistent with the long-term preservation of the refuge resources in accordance with permit conditions specified in section 13-60.5-6.
- (e) Even with a valid permit, the department may prohibit entry into any location or locations within the refuge as it may deem appropriate to conserve or manage resources.
- (f) No entry is allowed for extractive activities in the refuge, except as may be allowed by permit.